calls. *Held*, that the plaintiff may recover. *British Union & National Ins. Co.* v. *Ranson*, 60 Sol. J. 679.

At law, recovery on a contract of indemnity, before payment on the liability, is dependent on the construction of the contract. If broad enough to be an indemnity for liability, and not merely an indemnity for payment upon liability, recovery will naturally follow. *Gage* v. *Lewis*, 68 Ill. 604; *Churchill* v. *Hunt*, 3 Denio (N. Y.) 321; *In re Negus*, 7 Wendell (N. Y.) 499; *Showers* v. *Wadsworth*, 81 Cal. 270, 22 Pac. 663. See *Smith* v. *Ry. Co.*, 18 Wis. 17, 24. But equity, proceeding on equitable principles, will disregard the language of the contract even if it expressly limits the indemnity to payment on the liability. *Lacey* v. *Hill*, L. R. 18 Eq. 182; *In re Law Guarantee, etc. Society*, [1914] 2 Ch. 617; *Central Trust Co. of N. Y.* v. *Louisville Trust Co.*, 87 Fed. 23. See *Johnston* v. *McKiver*, 19 Q. B. D. 458, 460. As to the point raised in the case upon the assignability of a contract of indemnity, there should be no difficulty. There is of course nothing personal in the right to receive money. The few cases in point so hold without argument. *In re Perkins*, [1898] 2 Ch. 182; *Jenckes* v. *Rice*, 119 Iowa 451, 93 N. W. 384; *Marshall* v. *Cobleigh*, 18 N. H. 485. The fact that the assignee is the party against whose claim the indemnity was given cannot decrease his rights. Indeed that fact might have been taken to give him a right independent of assignment to proceed against the claim to the indemnity, which is an asset of his debtor, ahead of other creditors. *Cf. In re Richardson*, [1911] 2 K. B. 705.

CONTRACTS — RESTRICTION ON ASSIGNMENT — EFFECT OF WAIVER. — A contract between the city and a contractor provided that neither the contract nor the right to moneys due thereunder should be assignable. The contractor assigned the claims for money to the bank for security. The city assented thereto and paid the money into court. A subcontractor claims that the assignment is invalid and, hence, that he can attach the claim as an asset of the assignor. *Held*, that the assignment operated to give the bank a complete right to the money due. *Portuguese-American Bank of San Francisco* v. *Welles*, U. S. Sup. Ct., Oct. Term, 1916, No. 45.

The court lays down the principle that restraining the alienation of a debt is no more to be tolerated than restraining the alienation of a chattel, and for this reason the assignment in this case operated to perfect the right of the bank to the moneys in question. It is well established that provisions against assignment are for the benefit of the contracting parties and if they waive their rights and do assign and themselves permit assignments, third parties cannot interfere. *Wilson* v. *Reuter*, 29 Ia. 176; *Burnett* v. *Jersey City*, 31 N. J. Eq. 341. *Cf. Staples* v. *Somerville*, 176 Mass. 237, 241, 57 N. E. 380, 381. On the other hand, if such provision is not waived, the assignee has no claims enforcible against the obligor. *Griggs* v. *Landis*, 19 N. J. Eq. 350; *Andrew* v. *Meyerdirck*, 87 Md. 511, 40 Atl. 173; *Lockerby* v. *Amon*, 64 Wash. 24, 116 Pac. 463. But see *Spare* v. *Home Mutual Ins. Co.*, 17 Fed. 568. If the analogy sought to be drawn by the court between a chattel and a debt were carried to its logical conclusion it would follow that the provision against assignment has no effect and that a waiver thereof is immaterial. It is submitted that such an analogy cannot be drawn, since the legal conception of a *chose* in action is utterly different from that of a chattel. *Board of Trustees* v. *Whalen*, 17 Mont. 1, 41 Pac. 849; *Griggs* v. *Landis*, *supra*, 353. For an exhaustive inquiry into the nature of a *chose* in action as regards assignability, see W. W. Cook, in 29 HARV. L. REV. 816, and Samuel Williston, in 30 HARV. L. REV. 97.

CRIMINAL LAW — FORMER JEOPARDY — IDENTITY OF OFFENSES — INFERIOR COURT'S LACK OF JURISDICTION OF GREATER OFFENSE. — The defendant, convicted in a mayor's court on a charge of assault and battery, was sentenced to

the workhouse and served his term. Later an indictment was returned against him on the same facts charging assault with intent to rape, an offense over which the mayor's court had no jurisdiction. The defendant pleads double jeopardy. *Held*, that the plea is bad. *Crowley* v. *State*, 113 N. E. 658 (Ohio).

The decision rests upon the ground that as the mayor's court had no jurisdiction of assault with intent to rape the defendant was never in former jeopardy for that offense. The same reasoning is advanced in similar decisions on this point in other jurisdictions. *Boswell* v. *State*, 20 Fla. 869; *Murphy* v. *Commonwealth*, 23 Gratt. (Va.) 960; *Huffman* v. *State*, 84 Miss. 479, 36 So. 395. But the double jeopardy exists in placing the defendant twice in peril for the lesser, not for the greater, offense. *State* v. *Cooper*, 13 N. J. L. 361. The inferior court's lack of jurisdiction of the greater offense is, therefore, beside the point. See 1 BISHOP, CRIMINAL LAW, 7 ed., § 1058. The weight of authority supports this view and is *contra* to the principal case. *Regina* v. *Miles*, 17 Cox C. C. 9; *Storrs v. State*, 129 Ala. 101, 29 So. 778; *State* v. *Smith*, 53 Ark. 24, 13 S. W. 391; *Commonwealth* v. *Squire*, 1 Met. (Mass.) 258. See 16 HARV. L. REV. 142. An exception, however, has been established in cases where, after a conviction for assault, the person attacked dies from the wounds inflicted. *Regina* v. *Morris*, 10 Cox C. C. 480; *Commonwealth* v. *Roby*, 12 Pick. (Mass.) 496; *Commonwealth* v. *Evans*, 101 Mass. 25; *Diaz* v. *United States*, 223 U. S. 442. In these cases the total inadequacy of the punishment to the crime ultimately proved to have been committed has led courts to depart from the strict logic of the situation.

DOWER — EFFECT OF RELEASE OF DOWER — AVOIDANCE OF A FRAUDULENT CONVEYANCE IN WHICH DOWER IS RELEASED. — A wife joined her husband in a conveyance of realty to trustees. After the husband's death the conveyance was set aside as being in fraud of creditors. It is provided that a widow shall be endowed of one third of all inheritable lands of which her husband was seized during coverture. 4 CONSOL. LAWS OF N. Y., Real Property Law, § 190. The wife seeks dower in the property. *Held*, that she is entitled to dower. *Jenkins* v. *Mollenhauer*, 56 N. Y. L. J. 362 (N. Y. Sup. Ct., App. Term).

A conveyance in fraud of creditors is made voidable only for the protection of creditors of the grantor; and hence the grantor, or, if he is dead, his representatives, cannot upset it. *Britt* v. *Aylett*, 11 Ark. 475. See *Wetherbee* v. *Cockrell*, 44 Kan. 380, 383, 24 Pac. 417, 418; *Lathrop* v. *Pollard*, 6 Colo. 424, 427. Likewise a joint conveyance by husband and wife in fraud of the husband's creditors will effectually bar any dower claim as long as the creditors do not attack it. *Elmendorf* v. *Williams*, 57 N. Y. 322. *Cf. Kitts* v. *Wilson*, 130 Ind. 492, 29 N. E. 401. But when a fraudulent conveyance is avoided by creditors, it is regarded as if it never existed. A release of dower is operative only when made in favor of one having title to the property in which dower exists. *Pixley* v. *Bennet*, 11 Mass. 298. See 2 SCRIBNER, DOWER, 307; *Malloney* v. *Horan*, 49 N. Y. 111. If, therefore, the husband's conveyance is set aside by the creditor, the grantee loses also the benefit of the dower release. *Lockett* v. *James*, 8 Bush (Ky.) 28. The creditors by thus incidentally setting aside the release do not acquire the dower interest, since the release had deprived them of no benefits to which they were entitled. Nor is the widow estopped to claim her dower against the creditors, since their claim is not by virtue of her conveyance but in spite of it. Consequently it is generally held that, if the conveyance is set aside during the husband's life, the wife is entitled to dower on his death. *Ridgway* v. *Masting*, 23 Ohio St. 294; *Malloney* v. *Horan*, *supra*. Also, since an avoided conveyance is regarded as if it never existed, the widow should equally get dower, where, as in the principal case, the joint fraudulent conveyance was made during the life of the husband and avoided after his death. *Frederick* v. *Emig*, 186 Ill. 319, 57 N. E. 883; *Bohannon* v. *Combs*, 97 Mo. 446, 11 S. W. 232. See, *contra*, *Den* v. *Johnson*, 18 N. J. L. 87.